

**79th MEETING
OF THE
MARYLAND HEALTH CARE COMMISSION**

Thursday, December 15, 2005

Minutes

Chairman Salamon called the meeting to order at 1:07 p.m.

Commissioners present: Wilensky, Krumm, Moffit, Nicolay, Pollak, Risher, Row, and Todd.
Commissioners Conway and Moore attended the meeting via teleconference.

ITEM 1.

Approval of the Minutes

Chairman Salamon requested revision of the November 22, 2005 Minutes to record the attendance of Commissioner Toulson. Commissioner Debra Risher made a motion to approve the minutes of the November 22, 2005 meeting of the Commission as revised, which was seconded by Commissioner Constance Row, and unanimously approved.

ITEM 2.

Update on Commission Activities

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

Copies of the *Update* were made available on the documents table at the meeting and on the Commission's website.

ITEM 3.

ACTION: COMAR 31.11.06 – Comprehensive Standard Health Benefit Plan – Adoption of Short Term Options for the Small Group Market

Chairman Salamon announced that the Commission adopted the staff recommendations for the Comprehensive Standard Health Benefit Plan at its November meeting. He said that counsel, with assistance from staff, drafted regulations to conform to these proposed changes. He asked Bruce Kozlowski, Deputy Director of Performance and Benefits, to outline the proposed changes to the regulations for consideration.

Mr. Kozlowski said that the purpose of the regulations is to modify the Comprehensive Standard Health Benefit Plan's covered services and cost-sharing arrangements to promote increased participation and reduce or maintain the average premium cost of the Plan below 10% of the average annual Maryland wage, as required by law. He said that adding PharmFlex to the CSHBP would provide an innovative approach to pharmacy coverage. He also said that by covering generic and brand name drugs with a 75% coinsurance, the Plan would allow insurers more flexibility in designing tiers and cost-sharing, as well as maintaining employer flexibility to purchase riders. Mr. Kozlowski asked the Commission to adopt the regulations, which included coverage for brand name drugs as well as generics, as proposed permanent regulations so that the changes can be implemented July 1, 2006. Following discussion, Commissioner Sharon K. Krumm made a motion that the Commission approve promulgation as proposed permanent regulations, which was seconded by Commissioner Risher, and unanimously approved.

ACTION: COMAR 31.11.06 - Comprehensive Standard Health Benefit Plan – Adoption of Short Term Options for the Small Group Market, is hereby APPROVED.

ITEM 4.

ACTION: Final Report of the Certification of Need Program Task Force – Review of Public Comments and Action on Recommendations

Chairman Salamon asked Commissioner Robert E. Nicolay, Chairman of the Certificate of Need Task Force to present a summary of the public comments received for Commissioner consideration.

Commissioner Nicolay provided background information to the Commission, noting that the Task Force Report was posted on the Commission's website for public comment following the November meeting of the Commission. He said that comments were received from 38 organizations, including hospitals, home health agencies, hospice agencies, and industry professional associations. Commissioner Nicolay said that the comments were generally supportive of the Task Force's recommendations for streamlining the CON review process, increasing the capital review threshold, and updating the State Health Plan for Facilities and Services. Commissioner Nicolay added that, at the request of Commissioner Row, data on the volume of CONs and determinations of non-coverage by level of capital expenditure was included in each Commissioner's packet. Commissioner Nicolay said the largest number of comments received addressed the recommendation to deregulate home health agencies from the CON program. He said that 24 organizations commented on that recommendation, with 21 opposing and 3 supporting the recommendation to deregulate home health agencies from CON review.

Commissioner Nicolay made a motion that the Commission accept the recommendations set forth in the *Final Report of the Certificate of Need Program Task Force* with the exception of the recommendation to remove home health agencies from CON regulation, and recommended that the Commission add home health to the list of services for which no change is recommended at this time. Following extended

discussion regarding whether to recommend that home health agencies be removed from CON regulation, the Task Force recommendations, with the exception of the recommendation to remove home health agencies from CON regulation, were approved by the Commission members, with Chairman Salamon, Commissioners Conway, Krumm, Moore, Nicolay, Risher, Row, and Todd, voting in favor of the motion, and Vice Chair Wilensky, Commissioners Moffit, and Pollak voting against the motion. Chairman Salamon thanked Commissioner Nicolay for chairing the task force.

ACTION: *Final Report of the Certificate of Need Program Task Force – Review of Public Comments and Action on Recommendations, as revised, is hereby APPROVED.*

ITEM 5.

PROPOSED ACTION: COMAR 10.24.01 – Certificate of Need for Health Care Facilities – Modifications to Implement CON Task Force Recommendations

Chairman Salamon asked Suellen Wideman, Assistant Attorney General, to outline the proposed regulations. Ms. Wideman said that the purpose of this action was to update regulations that govern Certificate of Need review based on recommendations made by the Commission's CON Task Force. She said that the changes included: adding health care clinical information technology systems to the definition of what is included in business and office equipment not subject to CON review; adding provisions to the CON review process for convening an application review conference and a project status conference; eliminating the necessity of redocketing when making certain modifications to a CON application; and adding provisions for keeping the Commission apprised of the status of certain CON applications. Commissioner Row made a motion that the Commission approve the proposed regulations, which was seconded by Commissioner Krumm, and unanimously approved.

PROPOSED ACTION: COMAR 10.24.01 – Certificate of Need for Health Care Facilities – Modifications to Implement CON Task Force Recommendations, is hereby APPROVED.

ITEM 6.

PROPOSED ACTION: COMAR 10.24.05 – Development of Subacute Care Units – Repeal

Linda Cole, Chief, Long Term Care & Mental Health Services, presented the proposed change to repeal COMAR 10.24.05 – Development of Subacute Care Units. She said that COMAR 10.24.05 is no longer needed since the requirements for its sunset have been met. Commissioner Moffit made a motion that the Commission approve repeal of the regulation, which was seconded by Commissioner Row, and unanimously approved.

PROPOSED ACTION: COMAR 10.24.05 – Development of Subacute Care Units – Repeal is hereby APPROVED.

ITEM 7.

ACTION: CERTIFICATE OF NEED (CON)

- **CON Exemption, Civista Medical Center – Closure of Subacute Care Unit**

Chairman Salamon said that Civista Medical Center requested an exemption from Certificate of Need to close its 12-bed subacute care unit.

Susan Panek, Chief, Certificate of Need, said that Civista decided to cease operation of its hospital-based skilled nursing unit because the service was a continuing, increasing drain on its finances. Because sufficient capacity exists in the area's nursing facilities to absorb these post-acute admissions, Civista maintained, and staff agreed, that the health care system benefits from a shift of post-acute care from the hospital to the less costly setting these facilities represented, and that the nursing facilities also benefit from the resulting increase in their admissions and revenues.

Having reviewed the proposal by Civista Medical Center to permanently close the 12-bed hospital-based skilled nursing unit, which it operated for seven years following approval of a Certificate of Need action in November 1995, staff found that the proposed closure is not inconsistent with the applicable State Health Plan standards, and is in the public interest. Therefore, staff recommended that the Commission **APPROVE** the hospital's request for exemption from Certificate of Need for this action. Commissioner Row made a motion that the Commission approve the staff recommendation, which was seconded by Commissioner Moffit, and unanimously approved.

ACTION: CON Exemption, Civista Medical Center – Closure of Subacute Care Unit is hereby APPROVED.

- **Peninsula Regional Medical Center, Renovation and Expansion Project, Docket No. 05-22-2158**

Chairman Salamon said that Peninsula Regional Medical Center applied for a Certificate of Need for a new construction and renovation project at the hospital. He asked Paul Parker, Program Manager for Financial Analysis, to present the staff recommendation for Commission action.

Mr. Parker said that Peninsula Regional Medical Center proposed development of more MSGA bed capacity than had been identified as needed in the State Health Plan. He said that in order to be consistent with the State Health Plan, the proposed expansion and renovation project must be modified to provide no more than 360 total acute care beds. Mr. Parker stated that staff found that the proposed expansion of emergency department treatment capacity from 43 to 51 treatment beds to be reasonable. He said the project incorporates design features for improving patient safety, as well as design features to reduce or promote the reduction of fatigue among care givers. Mr. Parker noted that the Health Services Cost Review Commission stated that the project is financially feasible without an increase in rates. Therefore, staff recommended that the Commission order that, upon the applicant's timely filing of certain documents, a CON be issued to Peninsula Regional Medical Center for this project. Commissioner Row made a motion to approve the recommendation, which was seconded by Commissioner Krumm, and unanimously approved. Commissioner Todd recused himself from consideration of this matter.

ACTION: Peninsula Regional Medical Center, Application for Certificate of Need for Renovation and Expansion Project, Docket No. 05-22-2158, is hereby APPROVED.

ITEM 8.

ACTION: *Final Report on the "Affordability of Health Insurance in Maryland" (Required under Senate Bill 131 – Passed during the 2004 Session of the Maryland General Assembly) – Release of Report*

Chairman Salamon asked Carol Christmyer, Chief of Special Projects, to brief the Commission on the final report on the affordability of health insurance in Maryland. Ms. Christmyer said that during the 2004 legislative session, the Maryland General Assembly enacted SB 131 and HB 845, requiring the Commission and the Maryland Insurance Administration to study and report on issues related to the

affordability of private health insurance in Maryland. She described the interim report, completed in January 2005, defined and explained the drivers in health care spending and suggested how the State of Maryland, its businesses, and its residents may attempt to curb the growth of health care spending, increase access to health care, and improve quality of care. The interim report provided preliminary recommendations that are addressed in the final report due to the Governor and the Maryland General Assembly by January 2006. The final report describes the steps taken to address each of the following recommendations detailed in the interim report: transparency of cost information, emergency department diversion program, financial incentives, redesigning the MHCC small employer website, and drug price transparency. During the discussion that followed, a request was made that the Maryland Hospital Association study ED issues in addition to its survey on psychiatric patients. Commissioner Risher made a motion that the Commission approve the release of the report, which was seconded by Commissioner Krumm, and unanimously approved.

ACTION: Final Report on the “Affordability of Health Insurance in Maryland” (Required under Senate Bill 131 – Passed during the 2004 Session of the Maryland General Assembly) – Release of Report, is hereby APPROVED.

ITEM 9.

ACTION: Report on “Maintenance Drug Prescriptions Mail Order Purchase”

Chairman Salamon asked Ben Steffen and Linda Bartnyska to brief the Commission on the report on Maintenance Drug Prescriptions. Mr. Steffen said the report on the *Mail-Order Purchase of Maintenance Drugs; Impact on Consumers, Payers, and Retail Pharmacies* was required by SB 885, which mandated the Commission and the Maryland Insurance Administration, in consultation with the Maryland Board of Pharmacy, to study the impact of mail-order for maintenance drugs on consumers and retail pharmacies. Ms. Bartnyska said that the central finding of the report was that Maryland consumers would see savings if insurance carriers were allowed to offer incentives for mail-order use. She said the Commission estimates the savings to be about \$7 million in 2004 dollars. Ms. Bartnyska said the study estimated the impact on carriers and retail pharmacies. She said that carriers would experience savings of a similar magnitude to consumers. Ms. Bartnyska added that higher mail order prescriptions would lead to reductions in revenue for retail pharmacies with losses totaling about \$90 million. She observed that retail establishments with high shares of maintenance drugs would be impacted more negatively because those retailers fill few 90-day supply maintenance drugs. She also added that continued growth in overall drug utilization would offset losses for most retailers. Ms. Bartnyska noted the staff would brief the Board of Pharmacy at its monthly meeting on December 21, 2005. Following discussion, Commissioner Pollak made a motion that the Commission approve the release of the report, which was seconded by Vice Chair Wilensky, and unanimously approved.

ACTION: Release of the Report on Maintenance Drug Prescriptions Mail Order Purchase, is hereby APPROVED.

ITEM 10.

ACTION: Interim Waiver for C-PORT Hospitals Applying for the Primary PCI Waiver

Dolores Sands, Chief, Specialized Health Care Services, described the background issues and procedures for hospitals to obtain a Primary PCI Waiver. She said that under a research exemption granted by the Commission, eleven Maryland hospitals without cardiac surgical services provide emergency angioplasty for patients who are having a certain type of heart attack. She noted that the exemption has remained in effect so that the Commission can establish a process for hospitals without on-site cardiac surgery to

obtain a waiver for primary angioplasty services. Ms. Sands said that staff recommended the Commission grant the C-PORT hospitals an interim primary PCI waiver for the period from January 1 through July 31, 2006. She said the interim waiver will be replaced with a renewable waiver when the applicant has met the conditions of the interim waiver, or the end of the interim waiver period has been reached, whichever occurs first. Ms. Sands also said that the Commission may cancel the interim waiver granted to a hospital if, at any stage in the process of reviewing an application, the Commission determines that an applicant has failed to demonstrate the ability to comply with all requirements for primary PCI programs without on-site cardiac surgery as specified in regulations. Commissioner Moffit made a motion to approve the staff recommendation, which was seconded by Commissioner Pollak, and unanimously approved.

ACTION: Interim Waiver for C-PORT Hospitals Applying for the Primary PCI Waiver, is hereby APPROVED.

ITEM 11.

STATUS REPORT: Report on “Uncompensated Care for Physicians with at least 25% of their Practice in a Hospital Setting”

Chairman Salamon said that during the 2005 legislative session, the Maryland General Assembly passed HB 627, requiring the Commission and the Health Services Cost Review Commission to jointly assess uncompensated and undercompensated care provided by hospital-based physicians who provide at least 25% of their services in a hospital setting. Mr. Steffen provided an update to the Commission on the status of the report to the Governor and the Maryland General Assembly. Mr. Steffen said that staff has made considerable progress with the analysis of this report by obtaining detailed claim information from Medicaid and Medicare, in addition to the private claims database, to conduct the study. Staff will present a summary of the report at the January 19, 2006 Commission meeting and the report will be submitted to the Governor and the Maryland General Assembly following approval of the Commission.

ITEM 12.

PRESENTATION: Reporting Update for 2006

Joyce Burton, Chief, HMO Quality and Performance, presented updates to the final reporting requirements for Maryland Commercial HMOs for 2006 and the projected requirements for 2007. Ms. Burton also summarized public comments received through December 13, 2005. She noted that staff would be working with plans to ensure that the Commission focuses on the most important criteria and the most current data available.

ITEM 13.

A Motion on Price Transparency offered by Commissioners Moffit and Toulson

Chairman Salamon announced that the Commission directed staff to present a plan for its consideration in January 2006 to incorporate and format the best available price information, along with quality information, for inclusion in the Commission’s annual insurance, nursing home, and hospital reports for Maryland consumers. Following discussion, Commissioner Moffit made a motion to adopt price transparency, which was seconded by Commissioner Toulson, and unanimously approved.

ACTION: A Motion to adopt Price Transparency in the Commission’s performance reporting is hereby APPROVED.

ITEM 14.

Adjournment

There being no further business, the meeting was adjourned at 3:20 p.m. upon motion of Commissioner Row, which was seconded by Commissioner Wilensky, and unanimously approved by the Commissioners.